

**James Monroe to Thomas Jefferson, June 27,
1793, from Thomas Jefferson and James Monroe
Correspondence, Transcribed and Edited by Gerard W.
Gawalt, Manuscript Division, Library of Congress**

James Monroe to Thomas Jefferson

Albemarle June 27. 1793.

Dear Sir

I have been favored with yours of the 4th & shall observe the instruction respecting the fund in the hands of Mr. Pope by directing its immediate application to Mr. Barnett.

In my last I made some observations evincing the prosperity and policy of our neutrality in the present European war, but as that sentiment appears to be general, I refer to it now only as a proof that it is likewise mine. It leaves me more at liberty to comment on the conduct of the Executive since, which I do the more freely as I do not know what part you have borne in it. The measure I particularly refer to is the proclamation declaring this neutrality with the reply to the address of some merchants of Phila. and the order for the prosecution of two marines who had embarked in a privateer licensed by the French minister. I must confess I had considered the proclamation at first as only an admonition to the people to mind their own business, and not interfere in the controversy; and in this view altho I could not perceive the necessity of the measure, yet I was inclined to deem it harmless. As the executive magistrate, the competent authority having not otherwise declared, the President might, if he was distrustful of his constituents, endeavor to restrain them within, the limits such authority had proscribed, or rather allowed; if indeed there exists in the government a right to inhibit the citizens of the states from taking comms from

Library of Congress

either of the powers at war & fighting in their service. I did not suppose it was intended as a matter of right to declare what shod. be the conduct of these States in relation to this controversy. But the reply to the merchants and the prosecution above mentioned seem to denote the contrary, and to shew that the President meant it was such. Upon this construction I deem it both unconstitutional & impolitick.

I cannot conceive upon what principle the right is claimed. I think the position uncontrovertible that if he possesses the right to say we shall be neutral, he might say we shod. not be. The power in both instances must be in the same hands. For if the Executive could say we shod. be neutral how could the legislature, that we shod. was. In truth a right to declare our neutrality, as a distinct authority, cannot exist, for that is only the natural state of things, when a the positive power of declaring war is not exerted, and this belongs to the legislature only. Any interference therefore with it by the Executive, must be unconstitutional & improper.

As little can in my opinion be said in favor of its policy. Tis possible G. B. might wish to keep us neutral: if such were his disposition it became his interest to cultivate our friendship by surrendering the posts &ca. Whilst our conduct was in suspense that anxiety would be increased; but by this precipitate declaration the point has been given up. And for what object? What do we gain by it? We committed no offence untill we shod. violate

the laws of neutrality, and no power could compel us to say what part we would take in the controversy. By holding aloof on that head none could be dissatisfied except France in case she shod. claim the guarantee. Declarations of neutrality I believe generally succeed applications for them, or the contrary course. Had France applied for our aid, or had Britain that we wod. not aid her, then in either case, such notification wod. have been regular. But a declaration like ours is I suspect without precedent. I loses the merit of having not refused France, or of accomodating Britain. It gives us not claim upon either court. France indeed it outrages, for it decries her claim of guarantee, or yeilding it up, the merit of the concession. And Britain it assures of an accomodation.

Library of Congress

Again, why prosecute our citizens, for taking comms in the French service against what law have they offended, or upon what principle are they charged? The mere acceptance of the comn. cannot be deemed criminal, and the act of hostility upon the British vessel was without the jurisdiction of these States, as I presume upon the high seas. And the doctrine is well established that no offence can be committed against the laws of any society beyond the limits within wvhich they operate: for instance that an offence, such as murder or the like, committed in France cannot be punished here; and if upon the sea, the principle is the same, unless the party be a pirate, and in that case amenable to the admiralty tribunals of every country. The subsequent act of bringing the vessel into port here, does not I suppose constitute the ground for prosecution, moe than if these men had carried, or aided in carrying her, to the Island of St. Croix, or elsewhere & returned here. For it ie does the purchasers or mariners afterwards hired to take care of her, car equally criminal. This I take to be the doctrine of the common law. Tis certainly the basis upon which separate and independent societies are erected. Nor has it been enlarged by any act of the legislature that I know of; tho' indeed I have not the acts with me. So far upon the idea that the French country gives no separate rights or immunities, to one of our citizens otherwise than if he had none. But does it give none, & of which he may avail himself against the opposit powers, and even against his own country? If taken can he be treated as a pirate? The laws & usages of nation, are otherwise. Can we be made answerable for his conduct? If we had hired him to France, or Britain, as the Swiss in particular do, we cod. not be. As a volunteer then we certainly are not.

I do not absolutely deny the right of a society to restrain its members from the commission of certain enormities, beyond the limits of its own jurisdiction, under such penalties as it may impose. Tho' according to my present view of the subject, but few if any benefits, can be derived from it, and some objections occur. The local tribunal will always be sufficient for his punishment if apprehended & if he escapes, yet the power disposed may surrender him to justice. This I shod. think enough either for the suppression of vice, or national security. But to give our laws cognizance of offences committed in other countries, must

Library of Congress

be deemed not only sanguinary as it respects our citizens, but a derogation of the sovereignties in which they may be. The offence for instance by a fiction of the law must be considered as committed here. May we demand then & rescue him from their courts to be punished here, or shall he be twice punished for the same offence?

Nor am I an advocate for privateering; on the contrary, could wish the practice suppressed-but presume such reformation shod. be brought about by conventions throughout the world, and not the desultory operations of any one nation. But by taking the laws as they are, I cannot perceive wherein they have offended, or upon what principle the prosecution can be supported. In this position I think myself founded in relation to foreign authorities, for there where the doctrine of allegiance binds the subject in perpetual obedience to his sovereign, it has never been otherwise construed or applied, than to prohibit the right of expatriation and of course the taking up arms agnst his native country. To fight in the service of one Prince agnst another was never denied I believe to any one. I suspect it was never asked unless the party were already in the service of his own. But with us, will not the rights of citizenship be construed more freely? Will that of expatriation be denied? And may not the mere act of accepting a comn in a foreign service be deemed such if the party pleases? In this state there is a law to authorize it, but that law is drawn in such cautious terms, as to leave the point as it stood before, upon foreign authorities, improved by the principles of our revolution, and was intended not to abrogate any rights, but to make sure, what had been doubted.

But admitting it to be an offence and punishable by our laws, why prosecute these people untill formally demanded by that court, in case she had a right to demand it? Is it that we affect an extraordinary degree of refinement & political purity? The parties at war will not I apprehend ascribe it to that motive. Nations more generally shelter their citizens from punishment when due and demanded than otherwise. But to commence it ourselves, unauthorized, as I believe, and pursue it with such rigor, will be ascribed to some other.

Library of Congress

If we so seriously abhorred vice, and were disposed to banish it from our country, has no other instance of enormity presented itself worthy reprehension?

I have but little hope of a fortunate issue from the negotiation in Spain, for I observe that it is conducted on the part of that court by Gardoqui a subtle and malignant little wretch, highly incensed against us for defeating him on that point here, and he well knows the support he recd. upon that occasion from a party still high in office and all powerful in the present administration. The association of Carmi. too will I fear prove a clog in it, for tis possible he might deem a rapid success as a feather to his colleague taken from himself. And with Britain my expectation is on the same level, for our conduct to her since the adoption of the present govt., as more fully shewn

by this declaration of neutrality, and the acceptance of her patronage (for such I presume to be the case by our comrs. taking the rout of Niagara) to obtain our peace with the Indians, must convince them of our subservience to their views, or how extremely impotent and contemptible we are. We forced that nation to abandon those very Indians in her treaty with us, and now when opposed to them alone divided too on their part, and strengthened on ours by alliances with several tribes, we accept if not solicit, her aid to make our peace with those whom they had sacrificed. Either this nation must be among the most unprincipled, or she will endeavor to compensate her allies at our expense. To expect the contrary, unless we have the fullest assurance of his perfidy, must shew the weakness of our councils. I trust that our humiliation has attained its lowest point, when we are capable of placing ourselves in a situation so degrading & shameful. But the solidity of our credit with the brokers at Amsterdam is a medicine of sufficient virtue to heal every wound that can be given to the national honor & reputation. Excuse this letter which has exceeded the bounds I had contemplated, and be assured of the sincerity with which I am you affectionate friend & servt. Jas. Monroe

RC (Jefferson Papers, Library of Congress).